

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
SUDCO, INC.,	:	BANKRUPTCY CASE
	:	NO. 04-17205-WHD
Debtor.	:	
_____	:	
	:	
JANET WATTS, Trustee for the	:	ADVERSARY PROCEEDING
Estate of Sudco, Inc.,	:	NO. 05-1130
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
STONE CRUSHERS, INC.	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Compel Discovery, filed by Janet Watts (hereinafter the “Trustee”), in her capacity as the trustee of the bankruptcy estate of Sudco, Inc. The Motion is opposed by Stone Crushers, Inc. (hereinafter the “Defendant”). This matter arises in connection with a suit to avoid and recover alleged preferential transfers and, accordingly, constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(F); § 1334.

On January 19, 2006, the Trustee served upon the Defendant the Trustee’s First Set of Interrogatories. The Defendant’s responses were due on or about February 18, 2006. Upon the request of the Defendant, the Trustee agreed to extend the due date to March 27, 2006. The Defendant provided the Trustee with its responses to the interrogatories on March 28, 2006.

However, the Trustee is dissatisfied with the responses and contends that they are “evasive and non-responsive.” Specifically, the Trustee objects to the Defendant’s response to the interrogatory that asks the Defendant to list the facts supporting various defenses raised to the Trustee’s preference suit. The Defendant responded that the defenses were “asserted to avoid waiver” and did not list any facts to support the defenses. The Trustee seeks an order compelling the Defendant to provide a more complete answer to the interrogatory, as well as sanctions for the Defendant’s failure to appropriately respond and to make a good faith effort to resolve the discovery dispute.

The Defendant submits that its responses were as complete as possible. The Defendant stated that most of the defenses had been asserted to avoid the possibility of a waiver and that the Defendant provided sufficient facts and legal support for the defense asserted under section 547(c). The Defendant also acknowledges that it will comply with its continuing obligation to supplement its response as additional facts become available through the discovery process. The Defendant seeks sanctions against the Trustee’s counsel, pursuant to 28 U.S.C. § 1927, and attorney’s fees for having to defend an unnecessary motion, pursuant to Rule 37(a)(4)(B) of the Federal Rules of Civil Procedure.

The Trustee’s reply contends that the Trustee was justified in filing the Motion because: 1) the Trustee has been having difficulty with the Defendant during the discovery process, which has necessitated several extensions of the discovery period; and 2) the Trustee was entitled to be told that the Defendant had no facts at the time the Defendant filed its answer to support those defenses asserted to avoid waiver. For this reason, the Trustee opposes the imposition of sanctions and attorney’s fees.

Having considered the Defendant’s initial interrogatory response, the Court finds that the

answer is sufficient for this stage in the discovery proceeding. The Defendant stated that the majority of the defenses were asserted to avoid waiver and, in its answer with regard to defenses listed in paragraph 3, explained that the defenses were being asserted “to prevent waiver of the defense pending further discovery.” This statement, coupled with the Defendant’s response to the Trustee’s motion to compel, indicates that the Defendant did not have specific facts available at the time the answer was filed to support these defenses, but did not wish to waive the defenses in the event that further discovery disclosed facts that would support these defenses. For this reason, the Court will not compel further disclosure of facts that do not apparently exist or are unknown at this time.

That being said, the Court finds no basis to impose sanctions on the Trustee’s counsel for the filing the motion to compel. The Defendant’s answer could have been more clear as to the fact that, although the defenses were asserted to avoid waiver, the Defendant did not have any facts at that time to support the defenses. Both parties will be required to bear their own attorney’s fees arising from this dispute.

The Trustee’s Motion to Compel and for an award of attorney’s fees is **DENIED**. The Defendant’s Motion for Sanctions and Attorney’s fees is also **DENIED**.

IT IS SO ORDERED.

At Newnan, Georgia, this _____ day of June, 2006.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE